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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
10/601,911	06/24/2003	Mark Andrews		7584

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EXAMINER

CHAMBERS, MICHAEL S

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 10/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/601,911

Applicant(s)

ANDREWS, MARK

Examiner

Mike Chambers

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,6-8,10,11,13 and 14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,6-8,10,11,13 and 14 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Mansell-Phayre. Mansell-Phayre discloses

a stand , said stand having a base (f) and an upstanding post (a); a cross bar (b3) supported on said upstanding post, said crossbar having a horizontal orientation ; a series of strategically positioned upstanding standards (c,d,e) mounted on said cross bar, said standards circumscribing an arc, which arc defines the proper position of the bat during various parts of the swing from a start position through contact with a ball ,one said standard of said series of standards disposed at the rear of the batter, a second standard being located at a point midway in the batter's swing, and yet another of said standards being located at the outermost extension of a proper swing (fig 12). Regarding the claimed feature in as much structure set forth by the applicant in the claims, the device is capable of use in the intended manner if so desired (See MPEP 2112).

As to claim 10 : Mansell-Phayre discloses a moveable standard (fig 12).

Also,

Claims 1 , 6-8, 10,11, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Oppenheimer. Oppenheimer discloses

a stand , said stand having a base (31) and an upstanding post (32); a cross bar (26,27) supported on said upstanding post, said crossbar having a horizontal orientation ; a series of strategically positioned upstanding standards (20) mounted on said cross bar, said standards circumscribing an arc, which arc defines the proper position of the bat during various parts of the swing from a start position through contact with a ball ,one said standard of said series of standards disposed at the rear of the batter, a second standard being located at a point midway in the batter's swing, and yet another of said standards being located at the outermost extension of a proper swing (fig 1,2). Regarding the claimed feature, in as much structure set forth by the applicant in the claims, the device is capable of use in the intended manner if so desired (See MPEP 2112).

As to claim 6 : Oppenheimer discloses a tee (fig 2). Regarding the claimed feature, in as much structure set forth by the applicant in the claims, the device is capable of use in the intended manner if so desired (See MPEP 2112).

As to claim 7: Oppenheimer discloses a moveable tee (fig 2).

As to claim 8 : Oppenheimer discloses an adjustable standard (fig 2).

As to claim 10 : Oppenheimer discloses a moveable standard (fig 12).

As to claim 11: Oppenheimer discloses a moveable tee (fig 2).

As to claim 13 : See claim 1 rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-8, 11, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mansell-Phayre. Mansell-Phayre discloses the elements of claim 1, however it fails to clearly disclose the use of a fourth standard. It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed an appropriate number of vertical standards based on manufacturing costs and design choices. Gr

As to claim 7 : Mansell-Phayre discloses a moveable standard (fig 12).

As to claim 8 : Mansell-Phayre discloses an adjustable standard (fig 12).

As to claim 11 : Mansell-Phayre discloses a moveable standard (fig 12).

As to claim 13 : See claim 3 rejection.

As to claim 14 : See claim 3 rejection. The addition of a 4th standard would also be an obvious variation

Allowable Subject Matter

Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Note: The response to the prior office action, failed to follow the proper procedure in that claim identifiers were not included for all the claims and miscellaneous communication was included on the claim sheet (See below).

2. Please cancel Claim 2, without prejudice.

Claim 2 [Canceled]:

Please add new Claim 13 as follows:

13. A swing training device for baseball players to assist in developing a swing with a bat, said swing training device including

Claim 13 [New]:

The examiner has corrected the prior response but papers submitted with similar errors in the future will be considered non-responsive.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mike Chambers whose telephone number is 703-306-5516. The examiner can normally be reached on Mon-Fri 8:30-5:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Michael Chambers
Examiner
Art Unit 3711

October 14, 2004


GREGORY VIDOVICH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700